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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF WASHINGTON**

7 **UNITED STATES OF AMERICA,**
8 Plaintiff,
9 v.
10 **ROLAND W. FINNEY,**
11 Defendant.

12 **NO. CR-08-095-RHW**

13 **ORDER DENYING**
14 **DEFENDANT'S MOTIONS FOR**
15 **RECONSIDERATION,**
16 **GRANTING THE**
17 **GOVERNMENT'S MOTION FOR**
18 **STAY**

19 Before the Court are the Government's Motion for Stay (Ct. Rec. 145) and
20 Motion to Expedite Hearing thereupon (Ct. Rec. 146), and Defendant's Motion to
21 Permit Defendant to File Motion Under Seal (Ct. Rec. 148), Motion for
22 Reconsideration of Court Order Denying, in Part, Defendant's Motion to Suppress
23 (Ct. Rec. 149), and Motion for Partial Reconsideration of Order Granting in Part
24 Defendant's Motion to Suppress, Denying the Government's Motion in Limine
25 (Ct. Rec. 150). These motions were heard on an expedited basis without oral
26 argument.

27 The Court grants Defendant's motion to file under seal because Defendant's
28 first motion for reconsideration contains personal information of a confidential
informant.

29 As a general rule, the filing of a notice of appeal "confers jurisdiction on the
30 court of appeals and divests the district court of its control over those aspects of the
31 case involved in the appeal." *United States v. Ortega-Lopez*, 988 F.2d 70, 72 (9th
32 Cir. 1993) (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58
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34 **ORDER DENYING DEFENDANT'S MOTIONS FOR**
35 **RECONSIDERATION, GRANTING THE GOVERNMENT'S MOTION**
36 **FOR STAY * 1**

1 (1982). Where, as here, the Government appeals under 18 U.S.C. § 3731 a district
2 court's order of suppression, the district court is not automatically divested of all
3 jurisdiction, but may in its discretion enter a stay of further proceedings. *United*
4 *States v. Gatto*, 763 F.2d 1040, 1050 (9th Cir. 1985)

5 Defendant's motions for reconsideration ask the Court to revisit aspects of
6 the case involved in the Government's appeal, which are now out of the Court's
7 jurisdiction. Accordingly, Defendant's motions must be denied. Finally, the Court
8 finds that a stay is appropriate here because the appeal concerns evidence
9 containing substantial proof of a material fact.

Accordingly, IT IS HEREBY ORDERED:

1. Defendant's Motion to Permit Defendant to File Motion Under Seal (Ct. Rec. 148) is **GRANTED**.

2. Defendant's Motion for Reconsideration of Court Order Denying, in Part, Defendant's Motion to Suppress (Ct. Rec. 149) is **DENIED**.

3. Defendant's Motion for Partial Reconsideration of Order Granting in Part
Defendant's Motion to Suppress, Denying the Government's Motion in Limine
(Ct. Rec. 150) is **DENIED**.

4. The Government's Motion to Expedite Hearing(Ct. Rec. 146) is
GRANTED.

5. The Government's Motion for Stay (Ct. Rec. 145) is **GRANTED**. This matter is **stayed** pending resolution of the Government's interlocutory appeal.

IT IS SO ORDERED. The District Court Executive is directed to enter this order and to provide copies to counsel.

DATED this 10th day of March, 2009.

s/Robert H. Whaley
ROBERT H. WHALEY
Chief United States District Judge

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**ORDER DENYING DEFENDANT'S MOTIONS FOR
RECONSIDERATION, GRANTING THE GOVERNMENT'S MOTION
FOR STAY * 2**